

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

ISO New England Inc.

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Docket No. ER12-1627-000

**MOTION TO INTERVENE AND COMMENTS OF THE NEW ENGLAND
CONFERENCE OF PUBLIC UTILITIES COMMISSIONERS**

Pursuant to Rules 212 and 214(a)(3) of the Rules of Practice and Procedure¹ of the Federal Energy Regulatory Commission (“Commission”) and the Commission’s April 27, 2012 Notice of Filings #1, the New England Conference of Public Utilities Commissioners (“NECPUC”) hereby submits this motion to intervene and comments in the above-captioned proceeding. This proceeding relates to the Section 205² filing by ISO New England Inc. (“ISO-NE”) seeking to revise rules for the Forward Capacity Market (“FCM”) to be consistent with the fully integrated price-responsive demand (“PRD”) rules that are scheduled to become effective on June 1, 2016 (the “FCM Conforming Changes”).³

NECPUC provides these comments largely in support of the FCM Conforming Changes. NECPUC appreciates the time that ISO-NE staff and senior management dedicated to discussing states’ concerns and the commitments ISO-NE made in its filing to address a number of issues raised. These rules changes, coupled with ISO-NE’s commitments to develop additional related rules, represent a good faith attempt to achieve a comparable and fair treatment of resources.

¹ See 18 C.F.R. §§ 385.212 (Motions) and 385.214(a)(3) (Intervention).

² 16 U.S.C. § 824d (2006 and Supp. II 2009).

³ *ISO New England Inc.*, Market Rule 1 Price Responsive Demand FCM Conforming Changes for Full Integration, Docket No. ER12-1627-000 (filed April 26, 2012) (the “April 26 Filing”).

However, for the reasons detailed below, NECPUC believes that the proposed tariff changes could be improved by providing demand resources with greater guidance on what constitutes competitive offering behavior. Absent this guidance, the proposed revisions may create an unreasonable and unnecessary risk for demand resources and could mitigate their participation in the region's energy markets.⁴ To the extent the Commission approves the FCM Conforming Changes, NECPUC respectfully asks the Commission to require ISO-NE to initiate a stakeholder process to explore the development of standards or additional rules that provide sufficient definition to demand resources on what qualifies as competitive offering behavior.

I. COMMUNICATIONS

NECPUC requests that the individuals identified below be placed on the Commission's official service list in this proceeding and that all communications concerning this filing and future filings in this proceeding should be directed to:

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⁴ NECPUC, and some states individually, asked ISO-NE to delay the vote on, and ultimately the filing of, these proposed rules pending the resolution of open issues raised in the stakeholder process.

II. MOTION TO INTERVE

NECPUC is a not-for-profit corporation comprising all of the public utilities commissioners of the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Formed over 60 years ago and funded by the New England states, NECPUC's mission is the promotion of regional cooperation and effective communication on all public utility matters within New England. As a representative of New England's interests concerning the electricity industry, NECPUC has a vital stake in the just and reasonable operation of the New England power markets.

The participant regulatory bodies of the respective New England states are each a "state commission" as defined by 16 U.S.C. § 796(15) and 18 C.F.R. §1.101(k). As a representative of New England states' interests, NECPUC may be adversely affected by the outcome of these proceedings and, thus, has a substantial interest which cannot be adequately represented by any other party.

III. COMMENTS

ISO-NE states that the FCM Conforming Changes are driven by the Commission's established policy to ensure that comparable opportunities and obligations be accorded to comparable resources.⁵ More specifically, ISO-NE notes that implementation of Order 745's mandate to achieve comparable treatment of dispatchable generation and demand response resources in the energy markets "logically requires" comparable rights and obligations in the capacity market.⁶

⁵ April 26 Fling at 9.

⁶ *Id.* at 10. See *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, 76 Fed. Reg. 16,658 (Mar. 15, 2011), FERC Stats. & Regs. ¶ 31,322, *order on reh'g and clarification*, Order No. 745-A, 137 FERC ¶ 61,215 (2011).

The FCM Conforming Changes primarily modify the FCM rules in three areas. First, for active demand response resources with a Capacity Supply Obligation (“CSO”) in the FCM, the new rules would require these resources to make cost-based offers in the energy markets—notably in the day-ahead energy market. This obligation is commonly referred to as the “must-offer” requirement. Offers are required to specify: (1) the level of demand reduction capability that the resource is physically available to provide (which could be less than or greater than the resource’s CSO)⁷; (2) the resource’s inter-temporal parameters (e.g., minimum interruption duration); and (3) the price at which the resource agrees to reduce the capacity that is offered.⁸ Demand response providers must additionally re-declare in real-time any changes in a resource’s available capacity.⁹

Second, the FCM Conforming Changes apply the same Peak Energy Rent (“PER”) Adjustment to demand resources that is currently applied to other categories of resources with a CSO (e.g., generation resources).¹⁰ The third area of rules changes ranges from modifications to the qualification process to new auditing requirements and performance measurement and penalties.¹¹

ISO-NE also requests effective dates for the FCM Conforming Changes in two stages. It requests that some revisions take effect in January 2013, just prior to the beginning of the qualification process for the Forward Capacity Auction for the eighth Capacity Commitment period, while others would take effect on June 1, 2017 (i.e., the beginning of the eighth

⁷ Similar to dispatchable generation, demand response resources would generally have the ability to schedule “outages” under the FCM Conforming Changes, whereby such resources would communicate to ISO-NE that they are unavailable. *See* April 26 Filing at 21-22.

⁸ *See id.* at 13; FCM Conforming Changes, § III.13.6.1.5.1.

⁹ *See* April 26 Filing at 13; FCM Conforming Changes, § III.13.6.1.5.2.

¹⁰ *See* April 26 Filing at 15-16; FCM Conforming Changes, § III.13.7.2.7.5.

¹¹ *See* April 26 Filing at 17-31.

Capacity Commitment Period).¹² With the full implementation of the FCM Conforming Changes to take effect at the commencement of the eighth Capacity Commitment Period, ISO-NE also requests that the effective date of the fully integrated PRD rules be extended one year to the same June 1, 2017 date.¹³ ISO-NE additionally requests a waiver of the Commission's rules regarding the effective date of tariff changes to permit the dates to become effective in the two stages described above.¹⁴

NECPUC largely supports the FCM Conforming Changes. ISO-NE's filing follows a lengthy stakeholder process that failed to reach broad agreement on the rules changes.¹⁵ ISO-NE addresses in this filing a number of concerns raised during the stakeholder process and, through the combination of proposed rules changes and its commitment to develop additional market rules, presents a fair and reasonable approach to fully integrating demand response resources in accordance with the Commission's directives.

On balance, the FCM Conforming Changes largely achieve the objective of ensuring comparability between resources while recognizing the flexibility demand response providers need to participate in the marketplace. The rules changes allow demand response providers sufficient latitude in the quantity of capacity reductions they offer daily into the market and the prices at which they offer those resources, recognizing that these resources have economic considerations and physical characteristics that make them inherently different from other capacity resources.¹⁶ At the same time, the rules reflect that with comparable opportunities

¹² *Id.* at 5-8.

¹³ *Id.* at 5, 7-8.

¹⁴ *Id.* at 6.

¹⁵ For example, as ISO-NE notes, votes in both the NEPOOL Markets Committee and the Participants Committee fell short of even a simple majority in support of the proposal. *Id.* at 31.

¹⁶ *See id.* at 14.

come comparable obligations, applying new adjustments and requirements to demand response resources to harmonize the treatment of different categories of resources.

NECPUC strongly supports ISO-NE's commitment, included in the transmittal letter accompanying the proposed rules, to developing rules that would: (1) allow demand response resources to participate in the reserve market, and (2) permit all active demand response providers to participate as "reliability only" resources committed to responding in Action #6 of ISO-NE Operating Procedure 4, a space currently exclusive only to real-time emergency generation.¹⁷

However, the proposed rules changes fall short in providing sufficient definition regarding what constitutes competitive offering behavior by demand resources. ISO-NE states that neither the current market rules nor the FCM Conforming Changes contain a mechanism for the mitigation of demand response resource offers, but that the Internal Market Monitor will instead "monitor demand response offers to identify potential market manipulation, economic withholding or other market behavior concerns" and refer violations to the Commission pursuant to Section III.A.19 of Appendix A to Market Rule 1.¹⁸ While NECPUC appreciates ISO-NE's clarification that demand response offers are not subject to mitigation, the risk of enforcement action creates significant uncertainty and risk for demand response providers. In the absence of sufficient guidance regarding acceptable offering parameters (e.g., the permissible bounds within which opportunity costs can be reflected), NECPUC believes such uncertainty and risk may serve as a significant impediment to new and continued

¹⁷ Operating Procedure 4 refers to ISO-NE's criteria and guide for responding to a capacity deficiency event and is available at http://www.iso-ne.com/rules_proceeds/operating/isone/op4/op4_rto_final.pdf.

¹⁸ April 26 Filing at 15. Market Rule 1 is Section III of the ISO New England Inc. Transmission, Markets and Services Tariff.

demand response participation in the energy markets. We understand that a joint protest by various demand response providers filed today in this proceeding (“DR Providers’ Protest”) illustrates this concern in greater detail.

NECPUC recognizes the difficulty in structuring guidelines around a subject as complex as the opportunity costs of demand response providers, especially considering the breadth of resources participating in the market. Indeed, opportunity costs can fluctuate daily and, as the DR Providers’ Protest notes, costs may often reflect a blend of subjective and objective considerations, some of which may be extremely difficult to quantify. The FCM Conforming Changes should be complemented by the development of additional guidelines on the permissible bounds of competitive offering behavior by demand resources. To the extent that the Commission approves the FCM Conforming Changes, it should direct ISO-NE to initiate a stakeholder process in the near-term to address this unresolved issue.¹⁹

Finally, NECPUC supports ISO-NE’s request regarding the effective dates for the FCM Conforming Changes and the fully integrated PRD rules. NECPUC also supports ISO-NE’s related request of a waiver of the Commission’s requirement regarding the effective date for tariff changes. By granting ISO-NE’s request, the Commission will align the implementation of fully integrated PRD rules with the FCM Conforming Changes, thereby obviating the need for interim rules and eliminating potentially complicated contractual negotiations between demand response providers and their customers.²⁰

¹⁹ While a demand response provider or another market participant could initiate such a process by putting a proposal forward, we believe ISO-NE should lead this process as an extension of the FCM Conforming Changes.

²⁰ See April 26 Filing at 7-8.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, NECPUC hereby files this motion to intervene and comments and respectfully requests that the Commission: (i) grant its motion to intervene in this proceeding, (ii) approve the FCM Conforming Changes, (iii) condition such approval upon ISO-NE initiating a stakeholder process to explore the development of standards or additional rules that provide sufficient guidance to demand response providers on what qualifies as competitive offering behavior, and (iv) approve ISO-NE's request regarding the effective dates for the FCM Conforming Changes and the fully integrated PRD rules and the related request for a waiver of the Commission's rules.

Respectfully submitted on behalf of NECPUC,

/s/ Jason R. Marshall

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Date: May 17, 2012

CERTIFICATE OF SERVICE

In accordance with 18 C.F.R. § 385.2010 (2008), I hereby certify that I have this day served, via electronic mail or first class mail, the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at Boston, MA on this 17th day of May, 2012.

/s/ *Jason R. Marshall*
Jason R. Marshall